IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 322 of 2001

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MTZ POLYFILMS LTD.

Versus

ASHBEE SYSTEMS PVT. LTD.

Appearance:

MR MIHIR H JOSHI for Appellant No.

MR YN RAVANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/04/2005

ORAL JUDGEMENT

1. This appeal is directed against the order dated 21.7.2001 passed by the learned Civil Judge (Senior Division), Bharuch below Exhibit 9 in Special Civil Suit No.90 of 2000, returning the plaint to the appellant-plaintiff to present the same in a competent Court.

2. The plaintiff wanted to purchase a Weighbridge and on receipt of quotation from the defendant, they placed an order with defendant for supply of the same vide purchase order dated 24.11.1995. The defendant supplied Weighbridge on 21.9.1996. However, after supply of Weighbridge, the defendant did not make any arrangement for commissioning of the same. According to the plaintiff, reminders sent by them did not yield any result, but the defendant demanded the payment of remaining amount. According to the plaintiff, the defendant has grossly neglected and failed to comply with the terms of purchase order and therefore the plaintiff was inclined to return the Weighbridge to the defendant and to claim for refund of amount paid by them. In view of this the plaintiff filed Special Civil Suit No.90/2000 before the Court of Civil Judge (S.D.), Bharuch, praying for a decree in favour of the plaintiff directing the defendant to remove the Weighbridge lying at the site of the industrial unit of the plaintiff at Plot No.757 in GIDC Estate, Jhagadia and to make refund of the amount paid by the plaintiff.

3. The defendant raised a preliminary issue whether the said court has got territorial jurisdiction to entertain the suit of the plaintiff. The learned Civil Judge (SD), Bharuch, by order dated 21st July 2001 allowed the said application and directed to return the plaint to the plaintiff to present the same in the competent court having territorial jurisdiction to proceed with the said case, which is challenged in the present appeal.

4. Heard the learned counsel for the respective parties. Mr.Mihir Joshi, learned Senior Counsel appearing for the appellant submitted that the trial court has committed an error in passing the impugned order on the premise that no part of cause of action has arisen at Bharuch. He has drawn my attention to the agreement entered into between the parties. The terms of the agreement are as under:

"The Weighbridge is designed as per MOLEN of Holland to give digital indication of weight. It has fully solid state electronics.

Capacity: 50,000 Kg.
Accuracy: = 10 Kg.
Platform Size: 16 Mtr X 3 Mtr.
Type: Pitless.

Supply of complete deck with 6 load cells, S.S. CSP-M-25-A hermetically sealed, MOLEN Holland make of 25 MT capacity each, and loadcells mountings, 4 restrainers, junction box, a digital indicator for recording, compatible to PC and printer.

Head Work: The load cells are connected through a junction box to a digital indicator. This is a micro processor based unit having auto zero and push button facility. It has RS-232-C port for interfacing an IBM compatible PC.

Software - to be provided by you, included in the above costs.

Foundation: 1) You will provide us a detailed foundation drawing for our approval.

2) We will make foundation as per your drawing.

3) After completion of foundation at site as per your drawing, you will depute your engineer for checking the correctness of the foundation.

Inspection: You will inform us with sufficient notice, for pre-dispatch inspection.

Supervision for Erection & Commissioning; Free of cost. You will send the technical people for the erection and commissioning of Weighbridge on the foundation built by us free of cost. We will provide casual labour and lifting tackles only."

5. Mr. Joshi submitted that the defendant supplied Weighbridge on 21.9.1996 after a period of 180 days from the date of payment vide bill No.115 dated 21.9.1996. Even thereafter the defendant did not make any arrangement regarding commissioning of Weighbridge. Therefore, the plaintiff has addressed a notice to the defendant stating the said facts and calling upon the defendant to complete the erection of the Weighbridge at the earliest. He submitted that looking into all the documents, the suit is based on non-performance of agreement of erection of Weighbridge. The Weighbridge was required to be erected at Bharuch and therefore the trial court has jurisdiction to entertain the said suit.

6. Mr. Y.N. Ravani, learned Advocate for the respondent submitted that the Corporate Office of the plaintiff is situated in Mumbai and even the registered office of the defendant is also in Mumbai. He further submitted that looking to the convenience of the parties the suit should have been filed in Mumbai. He further submitted that even in the bill it is mentioned that it is subject to the Bombay jurisdiction.

7. Mr. Ravani has placed reliance upon a decision of the Supreme Court in the case of ABC Laminart Pvt. Ltd. Vs. A.P. Agencies, reported in AIR 1989 SC 1239. Relying upon para 9 of the said decision he submitted that in view of the facts of the case and in view of the agreement, the suit should have been filed in Mumbai Court. On the contrary Mr. Mihir Joshi has relied upon para 22 of the very same judgement to contend that the suit can be filed where part of the cause of action has arisen.

8. As a result of the hearing I am of the opinion that the appellant has succeeded in pointing out that the Civil Court at Bharuch has jurisdiction to entertain the suit. As per the agreement between the parties the erection of Weighbridge should have been made at Bharuch. In substance the subject matter of the suit is with regard to non-erection of the Weighbridge at Bharuch. Therefore part of the cause of action has arisen at Bharuch. As per provisions of section 20-C of CPC, the said court has jurisdiction to entertain the suit. On the facts of the case there is an allegation in the suit that the same is based on non-performance of the contract. As stated above, the non-performance refers to non-erection of Weighbridge at Bharuch. I am, therefore, of the opinion that even for convenience sake also it would be in the interest of justice to try the case at Bharuch because the erection of Weighbridge was required to be done at Bharuch. Therefore a local court of that area can only examine the issue in question and even for appointment of commissioner, examination of witnesses, etc. Thus, from the documents on record it is clear that the civil court at Bharuch has jurisdiction to entertain the suit.

9. In the premises aforesaid, the appeal is allowed. The order dated 21.7.2001 passed by the learned Civil Judge (Senior Division), Bharuch below Exhibit 9 in Special Civil Suit No.90 of 200 is quashed and set aside. The Civil Judge (S.D.), Bharuch, shall proceed with the suit and hear and decide the same as expeditiously as possible. No order as to costs.

[K.S.JHAVERI, J.]

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